

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-6629

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

KELVIN TYRONE FIELDINGS,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Newport News. Rebecca Beach Smith, District Judge. (CR-03-78; CA-04-113-4)

Submitted: August 25, 2005

Decided: September 2, 2005

Before TRAXLER and SHEDD, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Kelvin Tyrone Fieldings, Appellant Pro Se. Michael Calvin Moore, Assistant United States Attorney, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Kelvin Tyrone Fieldings seeks to appeal from the district court's order denying relief on his motion filed under 28 U.S.C. § 2255 (2000). The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of his constitutional claims is debatable or wrong and that any dispositive procedural rulings by the district court are also debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). We have independently reviewed the record and conclude that Fieldings has not made the requisite showing.

The only issue Fieldings asserts on appeal is that he did not agree to dismiss in the district court a claim from his § 2255 motion. This court is not the appropriate forum in which to raise this claim. Rather, under Fed. R. Civ. P. 60(b), a party may move the district court for relief from a final judgment or order based upon any reason justifying relief. Because Fieldings failed to make a sufficient showing as to the claim raised on appeal and failed to present any other issue, see 4th Cir. Local Rule 34(b),

we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED